HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. S/S No. 394(SS) 2006

Smt. Mohani Devi
Vs
Government of India
Through Chief Secretary
New Delhi.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 23.3.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 394 (SS) OF 2006

Smt. Mohani Devi,
W/o late Sri Jeevanand Tiwari,
R/o Village Simkhet, P.O. Ghingharutola,
Tehsil-Kanda
District – Bageshwar. .....Petitioner.

Versus

1. Government of India, through its Chief Secretary (Postal Department), New Delhi.
2. Chief Post Master General, Uttaranchal, Dehradun.
3. Postal Superintendent, District Bageshwar, Utaranchal.
4. Post Master, Sub Post Office, Ghingharutola, Tehsil Kanda, District Bageshwar. .....Respondents.

Mr. U.S. Kalakoti, Advocate for the petitioner.
Learned Standing Counsel for the Central Government.

Dated: 23.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to appoint the petitioner's son namely Hiraballabh Tiwari alias Hansha Dutt Tiwari under the U.P. Recruitment of Dependent of Government Servants Dying in harness Rules, 1974 and to pay the petitioner's family pension and gratuity with interest within the time allowed by the Hon'ble Court.

Briefly stated, the husband of the petitioner late Sri Jeewanand Tiwari was appointed as a Chowkidar in the department of respondent in the year, 1976 and he died on 13.02.2004 in harness.

The husband of the petitioner worked continuously in the respondent department for about 27 years.

After the death of her husband, the petitioner moved a representation for compassionate appointment and for family pension before the respondent no. 2, but the claim of the petitioner was rejected on the ground that the husband of the petitioner was a daily wager and not a regular employee in the department.

Petitioner has submitted that her husband had been working in the department of the respondent since 1976 till his death i.e. on 13.02.2004, but due to the laxity of the department he could not be declared as a regular employee though he was getting salary of a regular employee and during his service LIC and GPF was also being deducted from his salary.

According to the petitioner, he has represented to the respondents by was of a legal notice on 16.03.2005 and 27.02.2006 to do the needful, but till date no action has been taken in order to mitigate the grievance of the petitioner.

In ***Santosh Kumar Mishra Vs. State of U.P [(2002) 1 UPLBEC 337.*** It has been held as under:-

> *"Learned counsel for the petitioner has placed reliance upon the case of Raj Narain Prasad (Supra), for stressing his submission that the petitioner's father would be deemed to have been a regular Government servant in view of the fact that his appointment has been converted into work charge employee in pursuance of the scheme approved by the Apex Court. He further submitted that in view of the decision rendered in the case of Smt. Pushp Lata Dixit Vs. Madhyamik Shiksha Parishad and others, reported in 1991 (18) ALR 591, the petitioner is entitled for getting*

the appointment. In this case, the husband of Smt. Pushp Lata was working as a Paid Apprentice. The plea that he was not a regular employee although he had been working in the department for the last 17 years was not entitled for appointment under Dying in Harness Rule was rejected by the Court and the directions were issued to accommodate the petitioner (Smt. Pushp Lata) according to her qualifications relying upon this case, the writ petition filed by Smt. Maya Devi Vs. State of U.P and others, reported in 1998 (79) FLR 608, was also allowed in which the High Court found that the petitioner's husband in that case has satisfactorily worked for about 10 years until his death and though he may be a daily wager, the petitioner can be accommodated on compassionate grounds under Dying in Harness Rules. In the case of Smt. Saroj Devi Vs. State of U. P and others, reported in 1999 (3) ESC 2187 (All): 1 UPLBEC (Alld.) (Sum) 15, the benefit was given to the temporary appointee as he was working against a substantive vacancy."

" The Apex Court was considering the scheme and the status of a work-charge employee even after being confirmed it has been held that a work charge employee after confirmation does not cease to be a work charge employee and he continues to be a work charge employee. The question of regularization against a regular vacancy was not in issue before the Apex Court. No rule, law of any Government order has been brought to the notice of this Court by the State to indicate that any terminal benefits have been provided to the work charge employee who have to their credit a

considerable period of service and even in cases after very longer period of service, they retire as such. Even no provision for confirmation of a work charge employee as a work charge employee is available in the State of Uttar Pradesh nor any such provision has been shown by the learned State Counsel despite being specifically asked for."

" It may also be taken note of that if daily wager or a work charge employee is engaged against a particular duty or post, and that work is of perennial nature, the presumption would be that such an employee would be entitled for being treated to have been continuing against a regular vacancy."

Relying upon various judgment of the Apex Court as well as this Court, I have taken a view in ***Laxmi Devi Vs. General Manager Kumaon Jal Sansthan and others in W.P. No. 1119 (ss) of 2004,*** which was decided on 09.05.2005 that a daily wager is also entitled for compassionate appointment. Relevant observations are quoted below:-

"Further in view of the judgment of the Apex Court in the case of ***Pusupa Lata Dixit vs. Madhyamik Shiksha parishad and others 1991 (18) ALR 509 and Smt. Sushma Gosain and others vs. Union of India and others, AIR 1989 S.C., 1976****, so far as the appointment on compassionate ground should not be delayed as after the death of bread-earner, the whole family is starving.*

Similar view has been taken in the case of ***State of Manipur Vs. Thingujam Brahen (1996) 9 SCC Page 29, further in Smt. Saroj Devi Vs. State of U.P. 1999***

(3) Educational and Service Cases Page 215*, the benefit has also been extended to the temporary employees.*

In view of the aforesaid facts and circumstances the writ petition is allowed. The respondents are directed to consider the appointment of the petitioner under Government Servant Dying in Harness Rules, 1974 within a period of three months from the filing of the certified copy of the order."

Since the husband of the petitioner expired in the year, 2004, it is desirable in the interest of justice that the matter of compassionate appointment should have been considered without any delay in view of the Judgment of ***Smt. Sushma Gosai and others Vs. Union of India and others, 1989 (4) SCC 468.***

In the case of ***Smt. Sushma Gosai and others Vs. Union of India and others, 1989 (4) SCC, 468***, the Apex Court has held as under: -

" We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earned in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent no. 2 to appoint Sushma Gosain appellant in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today."

The Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Smt. Sushma Gosai v. Union of India 1989 (4) SCC, 468.*** The relevant observations are quoted below:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

In the case of ***Mst. Mangali Devi Vs. State of Uttaranchal, 2004 (1) U.D., 144***, it has been held that the dependant of the work charge employee is also entitled to be appointed on compassionate appointment.

It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a

Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

A writ of mandamus is issued directing the respondents to consider the appointment under Dying in Harness Rules. Further a writ of mandamus is issued directing the respondent to consider the claim of the petitioner for payment of dues towards family pension.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

23.03.2006
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